

**Q:** I am a contractor and have all things positioned for the "change," but I need to know how to get all new company code's for each of our schools. For example when I have an employee printed they use ##### for the management company code and all prints are forwarded to me. Now I need new ones for each of the schools and need to know how to do this.

**A:** This can be completed by each school completing an RI-087 "NONCRIMINAL JUSTICE AGENCY USER AGREEMENT FOR RELEASE OF CRIMINAL HISTORY RECORD INFORMATION between the MICHIGAN STATE POLICE CRIMINAL JUSTICE INFORMATION CENTER." [http://michigan.gov/msp/0,4643,7-123-1593\\_24055-292924--,00.html](http://michigan.gov/msp/0,4643,7-123-1593_24055-292924--,00.html)

**Q:** I'm a contractor (management company) working to get all CHRI forwarded to the public school academy (PSA) directly, if I have the school completes a RI-087, does the president of the management company sign this document?

**A:** No. The "agency representative" must have the authority to commit the agency to the agreement and is typically the head of the school, such as the PSA principal/administrator/director. If this position is questionable in this instance to have that authority, the responsibility will fall to the governing board of the PSA.

**Q:** What rights do individuals have in their CHRI information?

**A:** An individual may obtain a copy of their CHRI through a Personal Record Review (PL 93-579) or through the FBI (Title 28 §20.34 to review and request any change, correction, or update, also found on livescan form).  
Pub. L. 92-544

**Q:** What statutes or regulations are implicated regarding the privacy of CHRI information?

**A:** The FBI is empowered to exchange identification records with officials of state and local governments for purposes of licensing and employment if authorized by a state statute which has been approved by the Attorney General of the United States. The Attorney General's approval authority is delegated to the FBI by Title 28, CFR, § 0.85(j). The standards employed by the FBI in approving Pub. L. 92-544 purposes have been established by a series of memoranda issued by the Department of Justice (DOJ), Office of General Counsel (OGC), and Access Integrity Unit (AIU).

#### **Authorities**

The noncriminal justice use of CHRI audit is based on the following guidelines, where applicable:

- Title 5, United States Code (U.S.C.), Section 552, the Freedom of Information Act, requires the records be accurate, complete, timely, and relevant.
- Title 28, U.S.C., § 534, authorizes dissemination of CHRI, and provides that access to CHRI is subject to cancellation if dissemination is made outside of the authorized recipient.
- Title 5, U.S.C., § 552a, the Privacy Act, requires that agencies maintain a system of records which establish appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records.
- Title 42, U.S.C., Chapter 140, Subchapter II, § 14616, the National Crime Prevention and Privacy Compact (Compact), established the Compact Council, which is authorized to establish rules, procedures, and standards for the use of Interstate Identification Index (III) for noncriminal justice purposes. Determining compliance includes, but is not limited to: assessing participation requirements; the continual maintenance; and security of CHRI.
- Title 28, Code of Federal Regulations (CFR), 20.30, cites the administration of criminal justice shall include criminal identification activities, and the collection, storage and dissemination of CHRI.
- Title 28, CFR, 20.33 (a)(2), authorizes the dissemination of CHRI contained in the III to federal agencies authorized to receive it pursuant to federal statute or Executive Order.
- Title 28, CFR, 20.33 (a)(3), authorizes the dissemination of CHRI contained in the III for **use in connection with licensing or employment**, pursuant to Public Law (Pub. L.) 92-

544, 86 Stat.1115, or other federal legislation, and for other uses for which dissemination is authorized by federal law. CHRI Audit Guide v2.0 4 March 4, 2009

- Title 28, CFR, 50.12 (b), references the exchange of FBI identification records obtained under this authority may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities.

**Q:** May a management company require that a prospective employee forward a copy of their CHRI to the management company after signing a consent release? Thus, assuming a school official has fulfilled the school's statutory obligations to run the background checks, may the school's management company then have the applicant give them a copy of that report directly (i.e. obtaining it from the individual, not via the school)?

**A:** Title 28 § 20.23(1) states an individual subject to CHRI check be entitled to review and obtain a copy when necessary for the purpose of challenge or correction (FROM MSP)

**Q:** I am a school, and I know I'm not supposed to release a copy of the CHRI response to the individual unless for the purpose of challenge or correction, but if the individual paid for the fingerprint check themselves, does this still apply?

**A:** Yes, the law does not dictate who is required to pay for the fingerprinting. However, under federal law, Title 28, CFR, 50.12 (b), references the exchange of FBI identification records obtained under this authority may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities. The authorized purpose for the CHRI check was for employment, not for the individual to have a copy.

**Q:** In regards to MCL 380.1230(9), which requires hiring approval from both the superintendent and the governing body of a public school academy (PSA) when an applicant has a non-listed offense, or would such access be limited to information concerning the non-listed offense?

**A:** The MSP has stated the PSA administrator, charged with the day to day oversight management, (while an employee of the contractor) may have access to the CHRI. This position is a representative of the governmental PSA. The superintendent would also be included (whether permanently fixed at a school or not). The president of the PSA school board will be required to review the CHRI for the superintendent and principal/administrators/director to approve access.

MCL 380.1230 only speaks to the state response. MCL 380.1230a speaks to the federal response. The CHRI check completed is a Federal response, and yes it includes our own state response within. Therefore, we return to the beginning where CHRI can only be disseminated to a governmental agency. While state law was written in such a way that it allowed contractors to receive CHRI, federal law prohibits this action.

**Q:** Can the Administrative Assistant/Office Manager be the Local Agency Security Officer? He/she will assist the Principal in managing this process (Dissemination Log, sharing procedures, binder management, communicating with other contractors, audit preparation, compliance, etc.).

**A:** Yes, so long as this individual is also considered an authorized person to have access to CHRI MCL 380.1230(10) "Criminal history record information received from the criminal records division of the department of state police under subsection (8) shall be used by a school district, intermediate school district, public school academy, or nonpublic school only for the purpose of evaluating an individual's qualifications for employment or assignment in the position for which he or she has applied or been assigned and for the purposes of subsections (3), (4), (5), and (12)."

MCL 380.1230a(8) "The results of a criminal records check under this section shall be used by a school district, intermediate school district, public school academy, or nonpublic school only for

the purpose of evaluating an individual's qualifications for employment or assignment in the position for which he or she has applied or been assigned and for the purposes of subsections (3), (4), (5), and (12)."

**Q:** If we have a Principal and an Assistant Principal, or more than one Principal at a school, can they both be an Authorized Representative and have the CHRI results sent to them?

**A:** CHRI will only be forwarded to one e-mail address, but yes CHRI can be shared with more than one school representative, so long as they are part of evaluating an individual's qualifications for employment or assignment.

**Q:** Do we need a form for this request that the employee signs or can it be included in the Disclosure Documents upon hire? Regarding a question and answer on the MSP Q & A Sheet:

**Q:** Can one school agency complete a fingerprint background check on a substitute teacher and then share with other schools so as not to impose additional fingerprinting fees for the applicant?

**A:** Yes, one authorized agency may run the check and then share the response with other K-12 schools, so long as **the individual for whom the response pertains agrees in writing** to share the response and has had **not had a separation in service**.

**A:** MCL 380.1230a(4) & (5) only state that a school may share the results with another school if the applicant agrees in writing allowing the school to do so. Please refer to your school or district legal advisor for your individual schools obligation of when this is to happen.

**Q:** How is "separation in service" defined?

**A:** The legislation does not define this term. Please refer to your school or district legal advisor for assistance.

**Q:** As the management company, we require our Central Office employees to be fingerprinted as they frequently visit the schools, but they work for the management company only. Will we follow the same process we have followed using our management company ID? Can these fingerprint results be sent to a Human Resource Representative?

**A:** Management employee's not placed for employment in a school, cannot legally be requested to be fingerprinted under school employment. No law exists to allow for fingerprinting of these individuals.

**Q:** How will compliance audits be conducted, and how often?

**A:** All NCJA audits will be periodically conducted over a three year time period. While we try to provide some notice to the NCJA, the MSP is not required to announce our presence ahead of time.

**Q:** I am a school and have received a request from a contractor, of whom we do not have a contract with, to release information that references the 'red light, green light' type of document on the MSP website. Is it acceptable to share this information with the company?

**A:** Providing a green light/red light letter to any nongovernmental agency is not strictly prohibited. It is to each individual school agency completing these types of letters to ensure the letter completed does not provide indication of the schools decision of employment was determined based on the CHRI response received by the school.

Therefore, refrain from using the following words or phrases in these letters:

- A criminal background check
- A state and federal criminal check
- A fingerprint background check